

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

TERENCE K. BETHEA,

Plaintiff,

v.

Civil Action No. 2:07cv102

**JOYCE FRANCIS,
RONALD W. RIKER,
JOHN O'BRIEN and
JANE OR JOHN DOE,**

Defendants.

ORDER

It will be recalled that on June 20, 2008, Magistrate Judge Kaul filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. The Court notes that on June 26, 2008, the Report and Recommendation was returned undeliverable. The Court further notes that the Plaintiff has an ongoing obligation to keep the Court apprised of his current mailing address. Accordingly, the Court will proceed with consideration of the Report and Recommendation as being without objection, thus reviewing for clear error.¹

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff's Complaint², by the Plaintiff's Motion to Consolidate, and by the Defendants' Motion to Dismiss, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Moreover, the Court, upon a review for clear error, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that Plaintiff's Motion to Consolidate be, and the same hereby is **DENIED**. It is further

ORDERED that Defendants' Motion to Dismiss be, and the same hereby is, **GRANTED**. It is further

ORDERED that the Plaintiff's Bivens Complaint be, and the same hereby is, **DENIED** and **DISMISSED without prejudice**. It is further

ORDERED that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the Defendants. It is further

ORDERED that, if Plaintiff should desire to appeal the decision of this Court,

² Plaintiff's Complaint was brought pursuant to Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), wherein Plaintiff alleges that Defendants miscalculated his sentence causing him to serve more time than necessary.

written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: July 23, 2008

/s/ Robert E. Maxwell
United States District Judge